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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO 3226 OF 2003

PETITIONERS

1. Rakesh Kumar Dewangan, since deceased through father Bharatlal Dewangan, Parsuram Ward, Bhatapara, Distt. Raipur (Chhattisgarh)
2. Vijay Kumar Tiwari, aged about 40 years son of Shri Gopi Tiwari, Hathripara, Bhatapara, District Raipur (Chhattisgarh)
3. Santosh Verma, aged about years son of Tirithram Verma, Parsuram Ward, Bhatapara, District Raipur (Chhattisgarh)
4. Mahesh Dewangan, aged about years son of Rewaram Dewangan, Parsuram Ward, Bhatapara, Raipur (Chhattisgarh)
5. Ramesh Dewangan, aged about years son of Rewaram Dewangan, Parsuram Ward, Bhatapara, distt. Raipur (Chhattisgarh)
6. Mohanlal Sahu, aged about years son of Shri Samaru Ram Sahu, Hathnipara, Bhatapara, Distt. Raipur (Chhattisgarh)
7. Santram Sahu, aged about years son of Samaru Ram Sahu, Hathnipara, Bhatapara, District Raipur (Chhattisgarh)

Versus

RESPONDENTS

1. The Municipal counsil, Bhatapara, through : Chief Executive Officer, Municipal Counsil, Bhatapara, District Raipur (Chhattisgarh)
2. Chief Executive Officer, Municipal Counsil, Bhatapara, Raipur (Chhattisgarh)

Present : Mr. Sourabh Jaiswal, learned counsel for the petitioners.
Mr. Shree Kumar Agrawal, Sr. Adv., with Mr. Sourabh Sharma, learned counsel for the respondents.

ORAL ORDER
(Passed on 30th January, 2006)

The Municipal Council, Bhatapara, the first respondent herein, passed a resolution dated 18/11/1996 resolving to construct a shopping complex in a vacant open land in order to stop further encroachments on the vacant land owned by it. In pursuance of that resolution, the open land in front of water filter plant was auctioned on 04/12/1998 in which the petitioners herein as well as eleven other bidders participated and the petitioners were allotted a particular shop out of eighteen shops proposed to be constructed. The petitioners have produced the order dated 08/12/1998, Annexure-P/3, allotting shop No.8 for Rs.57,000/- in favour of the first petitioner. Similar orders are also issued in favour of the remaining petitioners, but, the Municipal Council did not construct the shops as planned. As per the Municipal Council, they constructed 24 shops in the same land in pursuance of sum of Rupees Fifty lacs sanctioned by the Govt. of India as well as the State Government under the Integrated Development of Small and Middle Towns Scheme (IDSMT Scheme). Since the Municipal Council did not construct eighteen shops, as originally planned, the petitioners, being aggrieved by the said action of the Municipal Council, have preferred this writ petition praying for the following reliefs:

"RELIEF SOUGHT:

Under the facts and circumstances narrated above, the petitioners pray for the following relief:-

7.1 That the Hon'ble Court may kindly be pleased to quash annexure P-6.

7.2 That the Hon'ble Court may kindly be pleased to direct the respondents to deliver the possession of the

shops to the respective petitioner in respect of the auctioned shops, where the petitioners had been successful bidder.

7.3 The respondents be further directed not to re-auctioned the shops, which have already been auctioned.

7.4 Cost of the petition be allowed.

7.5 Any other relief, which this Hon'ble Court may deems fit and proper under the facts and circumstances of the case, be allowed."

(2) The writ petition is opposed by the Municipal Council by filing return.

(3) I heard learned counsel for the parties. It was contended by the learned counsel for the petitioners that the first respondent – Municipal Council having solemnly promised the petitioners to allot shops out of eighteen shops originally planned should not back-out from its promise and therefore, *mandamus* would lie to the Municipal Council, Bhatapara to carry out its promise to the petitioners. Learned counsel for the respondents, *per contra*, would, at the threshold, point out that merely because, in pursuance of the auction notice the petitioners had deposited earnest money and 1/4th of the cost of the shop, that circumstance itself would not vest any enforceable rights in the petitioners to seek *mandamus*. It was next pointed out by the learned Senior Council that the Municipal Council, as originally planned, did not construct eighteen shops and, therefore, allotting shops to the petitioners, as per allotment order dated 08/12/1998 marked as Annexure-P/3, would not arise. It was also contended by the learned Senior Counsel that the twenty-four shops constructed under the Integrated Development of Small and Middle Towns

Scheme could not be allotted to the petitioners and those shops have to be auctioned in accordance with law. In reply, learned counsel for the petitioners would submit that for any reason if the Court is not inclined to issue direction to the first respondent – Municipal Council to allot shops to the petitioners, the petitioners should be compensated fairly by awarding interest at a reasonable rate.

(4) Although Annexue-P/3, order dated 08/12/1998, issued to the petitioners in an unmistakable terms, states that the shops are allotted for a consideration of Rs.57,000/- by each allotee, the fact remains that the Municipal Council did not construct eighteen shops, as originally planned. In other words, the Municipal Council had abandoned its plan to construct eighteen shops proposed to arrest and prevent further encroachments in the land belonging to it. Therefore, issuing *mandamus* or direction to the Municipal Council to allot shops in favour of the petitioners would not arise. Similarly, the Court would not be justified in directing the Municipal Council to allot shops out of twenty-four shops constructed by it under the Integrated Development of Small and Middle Towns Scheme, because, admittedly, those twenty-four shops are constructed by securing liberal grants from the Govt. of India and by the State Government and therefore, allotment of those shops should be done strictly in accordance with law and in conformity with the norms and conditions of grant. The persons like the petitioners cannot be treated differently for treatment with regard to allotment of any of the twenty-four shops constructed under the Integrated Development of Small and Middle Towns Scheme. It is trite that the petitioners have to compete with similarly circumstanced others and if the request made by the learned

counsel for the petitioners to allot those sites is acceded to, it would violate Article 14 postulates. In that view of the matter, I am not inclined to grant *mandamus* to the petitioners commanding the Municipal Council, Bhatapara to allot shops out of twenty-four shops constructed by it under the Integrated Development of Small and Middle Towns Scheme.

(5) I, however, find considerable force in the submission of the learned counsel for the petitioner that the Municipal Council having kept EMD and 1/4th cost of the shops in its pocket for roughly six years, should not be allowed to make unlawful gain and it should be directed to refund EMD as well as 1/4th of the construction cost of the shops deposited by the petitioners with reasonable rate of interest. It is well settled that the State, State Authorities and instrumentalities of State cannot be permitted to make wrongful gains out of their own wrongs. The wrong is on the part of the Municipal Council in not translating promise made to the petitioners vide allotment orders dated 08/12/1998. The Municipal Council having collected considerable sums of money in the year 1998 must have used that money for its own purpose all these years. Looking from that angle also, it would not have any legitimate grievance to pay reasonable interest.

(6) In the result and for the foregoing reasons, I allow the writ petition in part. A direction shall issue to the Municipal Council, Bhatapara – the first respondent to refund EMD and 1/4th of the construction cost deposited by the petitioners with interest @ 12% per annum from the date of deposit till payment. The petitioners are also jointly entitled to cost of

this writ petition which is quantified at Rs.3,000/- payable within a month.

The refund shall be made with interest within a period of two months.

Sd/-

CHIEF JUSTICE
30/01/2006

Brajesh